

APPEAL NO. 031896
FILED AUGUST 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 23, 2003. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and that because the claimant had not sustained a compensable injury, the claimant did not have disability.

The claimant appealed, contending that he was in the course and scope of his employment ("working") getting packing materials at the time of his injury. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained multiple fractures of his left leg on _____, when the pallet jack he was driving collided with a forklift driven by a coworker. At issue is whether the claimant was furthering the affairs of the employer (getting packing materials) or furthering his own interests selling burritos at the time of the accident. Both parties at the CCH agreed that this case boiled down to a credibility issue. The hearing officer reviewed the evidence and conflicting testimony, commented that the claimant's testimony "was not credible or persuasive" and concluded that the claimant had deviated from his job duties and willfully violated the employer's policy (left his work area without authorization and selling burritos).

Whether the claimant's compensable injury was in the course and scope of his employment was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge